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VIA ELECTRONIC FILING

The Honorable John Michael Vazquez, U.S.D.J.
United States District Court, District of New Jersey
Martin Luther King Building & U.S. Courthouse
50 Walnut Street, Newark, NJ 07102

Re: Borough of Edgewater v. Waterside Construction, et al., Case No.: 2:14-cv-05060; North River Mews v. Alcoa, et al., Case No. 2:14-cv-08129 (JMV-AME)

Dear Judge Vazquez:

On behalf of Arconic, we submit this letter in reply to the Daibes Defendants' April 18, 2023, letter Opposition [ECF No. 458] to Arconic's letter request to file a motion *in limine* barring the Daibes Defendants from seeking monetary damages under a rescission theory [ECF No. 456].

The Daibes Defendants plead two separate fraud claims: (1) *fraudulent concealment*, for which they seek damages measured by the cost of removing and remediating allegedly concealed underground storage tanks; and (2) *fraud in the inducement*, for which they seek rescission of the Purchase Agreement. Although the Opposition refers to the second claim, in substance it focuses solely on the first claim. *Arconic's proposed motion relates solely to the second claim*, and seeks only to bar recovery of *rescissory damages* (monetary damages) in lieu of equitable rescission. Rescissory damages must account for both the harm **and the benefit** to the plaintiff resulting from the transaction, so that any damages awarded put the plaintiff in the same position *as if the transaction had never occurred*—no better or worse. The Daibes Defendants have provided no basis to calculate such damages and, therefore, cannot recover them. The Opposition does not address this fundamental point, and none of the cases cited therein involve rescissory damages.

Arconic's proposed motion is not a late-filed summary judgment motion because it does not seek to dismiss the first fraud claim at all, and only seeks to bar a particular type of relief for the second fraud claim. The Daibes Defendants can still pursue their fraudulent inducement claim and seek equitable relief—they simply cannot seek monetary relief for that claim.

Respectfully,

/s/ Charles Rysavy

Charles F. Rysavy

cc: All Counsel of Record (via ECF)